

UNITED STATES DISTRICT COURT
for the
District of New Hampshire

Kenneth Danielson,
Plaintiff

Civil Action Number: 1:20-cv-782-JL

v.

JURY TRIAL REQUESTED

Tourist Village Motel, Inc.,
Defendant

Tourist Village Motel, Inc.
Third-Party Plaintiff

v.

Androscoggin Valley Hospital
Third-Party Defendant

THIRD-PARTY COMPLAINT
AND DEMAND FOR JURY TRIAL

NOW COMES the third-party plaintiff, Tourist Village Motel, Inc., by and through its attorneys, Desmarais Law Group, PLLC, and states as follows:

1. The third-party plaintiff, Tourist Village Motel, Inc., is located at 60 Mason Street, Berlin, New Hampshire. The third-party defendant, Androscoggin Valley Hospital is located at 59 Page Hill Road, Berlin, New Hampshire.
2. The third-party plaintiff owns the property located at 144 Main Street, Gorham, New Hampshire. The third-party plaintiff has been sued in the underlying claim by Kenneth Danielson. The crux of Danielson's claim is that on January 11, 2018, he slipped and fell on one of the stairs which led from the front door of the premises located at 144 Main Street in Gorham, New Hampshire. It is further alleged that the premises were not maintained in a reasonably safe

manner, snow and ice were not shoveled, and the stairs were not treated with ice melting products or sand. See underlying Complaint, Paragraphs 8 and 13.

3. The third-party defendant, Androscoggin Valley Hospital, entered into a Lease with Third Party Plaintiff. A copy of the Lease is attached hereto as Exhibit 1. The Lease includes the following provisions:

7. INSURANCE. LESSEE shall annually provide LESSOR with a certificate of insurance with liability coverage in the amount of One Million Dollars (\$1,000,000) per incident. LESSEE shall maintain such insurance in full force and effect for the duration of this lease, and LESSOR shall be named co-insured in any such policy of insurance.

...

11. INDEMNITY. The LESSEE hereby agreed to hold harmless and indemnify the LESSOR against all losses and claims (including those of the LESSEE and its agents, employees, licensees, invitees and guests) for death, personal injury, or property damage to any person or persons on or about the demised premises or otherwise arising out of the use or condition of the demised premises, except for those claims arising out of the negligence of the LESSOR, its servants and employees.

4. Although the third-party plaintiff has filed an Answer denying the claims of the underlying plaintiff, to the extent that it is determined that the third-party plaintiff is legally at fault, then Androscoggin Valley Hospital is liable to the third-party plaintiff.

COUNT I
Breach of Contract

5. The third-party plaintiff incorporates and re-alleges the allegations as set forth above.

6. The third-party defendant had a contractual obligation to maintain liability insurance in full force and effect for the duration of the lease and to have the third-party plaintiff

named co-insured in any such policy of insurance. Upon information and belief, the third-party defendant failed to comply with the insurance requirements in the Lease.

7. The third-party defendant has a contractual obligation to indemnify and hold harmless the third-party plaintiff against all losses and claims for personal injury to any person or person on or about the demised premises, or otherwise arising out of the use or condition of the demised premises. As of the date of this pleading, third-party defendant has failed to indemnify and hold harmless the third-party plaintiff against Danielson's claims.

8. To the extent that the third-party plaintiff is deemed legally at fault to the underlying plaintiff, the third-party defendant breached its contractual duties to the third-party plaintiff, and as a result, it should indemnify the third-party plaintiff for any damages that it may be adjudged to pay, including all costs and fees for having to defend the underlying action.

COUNT II
Contractual Indemnification

9. The third-party plaintiff incorporates and re-alleges the allegations as set forth above.

10. Pursuant to the Lease, the third-party defendant agreed to indemnify and hold harmless the third-party plaintiff against all losses and claims for personal injury to any person or person on or about the demised premises, or otherwise arising out of the use or condition of the demised premises.

11. The third-party defendant has breached the Lease contract in that it has failed, refused and/or denied to indemnify and hold harmless the third-party plaintiff against the underlying plaintiff's claims.

12. To the extent that the third-party plaintiff is deemed legally at fault to the underlying plaintiff, the third-party defendant breached its contractual duties to the third-party plaintiff, and

as a result, it should indemnify and hold harmless the third-party plaintiff for any damages that it may be adjudged to pay, including all costs and fees for having to defend the underlying action.

WHEREFORE, the third-party plaintiff, Tourist Village Motel, Inc., demands judgment against the third-party defendant in an amount to be determined at trial, plus attorney's fees, continuing costs and interest, and such other and further relief as justice may require.

DEMAND FOR JURY TRIAL: the third-party plaintiff demands a trial by jury with regard to this third-party Complaint on all issues and claims so triable.

Respectfully submitted,

Tourist Village Motel, Inc.,
By its counsel,

DESMARAIS LAW GROUP, PLLC

September 9, 2020

By: /s/Debra L. Mayotte
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CERTIFICATE OF SERVICE

I state that on this date I am sending a copy of this document as required by the rules of the court. I am electronically sending this document through the court's electronic filing system to all attorneys and to all other parties who have entered electronic service contacts (email addresses) in this case. I am mailing or hand delivering copies to all other interested parties.

/s/Debra L. Mayotte
Debra L. Mayotte